STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105

FINAL STATEMENT OF REASONS

DATE: June 11, 2009 **REGULATION FILE: REG-2009-00009**

TITLE MARKETING REPRESENTATIVE CERTIFICATE APPLICATION AND RENEWAL

UPDATED INFORMATIVE DIGEST

All the information set forth in the Informative Digest contained in the Notice of Proposed Action dated April 11, 2009 remains accurate. That Informative Digest is incorporated herein by this reference.

Since the issuance of the Notice the Department has made a nonsubstantive change to the language of the regulation text, in two places: Paragraph (b)(3) of Section 2194.51 and Paragraph (b)(2) of Section 2194.52. In both instances the term "application expiration date" has been changed to "certificate expiration date." Nowhere else in the regulations is reference made to the expiration of an application. Accordingly the term "application expiration date" does not signify any particular date, given the regulations' silence as to even the prospect that the application could expire in the first place. Rather, the context in which each iteration of the term appears indicates that the date that is intended to be described is the date upon which an originally issued certificate of registration will expire. This date, on the other hand, is ascertainable by the terms of the regulations and is defined as the "certificate expiration date," in Paragraph (a)(4) of Section 2194.51. For these reasons the correction does not substantively change the meaning of the proposed regulations.

UPDATE OF INFORMATION CONTAINED IN INITIAL STATEMENT OF REASONS

The Initial Statement of Reasons indicated that the total cost to the Department in each of fiscal years 2009-2010 and 2010-2011 was estimated to be $393,433. However, the Department has revised its estimate of the cost that will be incurred in each of these fiscal years, to $385,433. The revision reflects an adjustment in the credit card convenience fees the Department expects to pay: We now assume, for purposes of this estimate, that the credit card convenience fees will be incurred not annually but once every three years.

UPDATE OF MATERIAL RELIED UPON

No material other than the transcript of the public hearing and a copy of the Economic and Fiscal Impact Statement bearing the signature of Department of Finance Program Budget Manager Nona Martinez has been added to the rulemaking file since the time the rulemaking record was opened, and no additional material has been relied upon.

MANDATE UPON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department has determined that the proposed regulations will not impose a mandate upon local agencies or school districts.

ALTERNATIVES

The Commissioner has determined that there are no alternatives that would be more effective, or as effective and less burdensome to affected persons, than the proposed regulations. In support of this determination is the fact that no such alternatives were suggested during the public comment period, despite the express invitation therefor that was extended in the Notice of Proposed Action.

SUMMARY OF AND RESPONSE TO COMMENTS

Commenter	Synopsis or Verbatim Text of Comment	Response
Craig C. Page, California Land Title Association	Inability of the Title marketing representative or Employing Company to Get Copy of Application for Filing: Under the current system, once a registration number is issued to a title marketing representative who has filed an application with the CDI, there does not appear to be a way to retrieve a copy of the application for the title company files. Obviously, title companies are responsible for the supervision and monitoring of their title marketing representatives and the system should be modified to provide the ability to get a copy of the original application. The CLTA would suggest that this information be made available through the Department's online business entity services portal.	Nothing in the legislation the proposed regulations are implementing indicates, suggests or implies that the Department is to make available to employers the contents of an applicant's application. Indeed, the Department could conceivably incur liability in tort for releasing this information in certain circumstances. Applicants, however, can retrieve a copy of their completed application by returning to the online application initial screen, until such time as final action has been taken on their application or the application expires. At any rate, the proposed regulations do not document the details of the workings of the Department's online business entity services portal, once a company has gained access to it. Accordingly no change to the regulation text has been made in response to this comment.

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Craig C. Page, California Land Title Association	The Online Application for Title Marketing Representatives Should Include the ATI Number: In order to ensure the expeditious handling of title marketing registration applications, the online application should be modified so that the ATI number is requested and remains with the application during processing. Numerous title companies have found that the ATI numbers, when submitted separate and apart from the application process, are being lost in the process, requiring title companies to provide the ATI number twice. If it is part and parcel of the application, the ATI number is not likely to get lost.	The procedures embodied in the proposed regulations already ensure that the Department handles the applications expeditiously. Indeed, it is for the purpose of ensuring that title marketing representatives can begin to operate under their provisional authority without delay that the decision was made not to require that proof of fingerprinting be submitted in the online application. In order to be granted provisional authority, applicants must, according to Ins. Code § 12418.1, have submitted an application that is filed and pending with the Department. Requiring that the Automated Transaction Identifier (ATI) be input in order to complete the online application would mean that applicants who did not have or know their ATI at the time they filled out the online application would not be able to complete the application and would therefore not be able work as a title marketing representative, since they would not have completed the application. The Department has not lost any ATIs. Paragraph (a)(4) of Section 2194.54 of the proposed regulations makes it the applicant's responsibility to retain the ATI indefinitely. If ATIs are being lost, therefore, it is the applicants' responsibility. Title companies are free to institute whatever measures they feel are necessary in order to ensure that their employees retain their ATIs. The commenter mentions that title companies have had to provide ATI numbers twice. However, the proposed regulations do not require title companies to provide ATIs at all. The commenter may be referring to a situation that existed before the regulations became effective, where the Department requested that certain companies provide the ATIs assigned to their employees. This system was cumbersome and time-consuming and so was replaced with the system that is codified in the proposed regulations. Accordingly no change to the regulation text has been made in response to this comment.

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Craig C. Page, California Land Title Association	Five days is Too Short a Time Frame for Filing an Application and Employing a Representative: Section 2194.51 (a) (2) of the proposed regulations state that title companies have five (5) days to employ a title marketing representative in the CDI database from the date of his or her formal filing of an application. Title companies are currently telling their operations personnel that a title marketing representative cannot work for the company until he or she completes the application and send the title company their registration ID number to employ them in the CDI database. This five-day limitation is not very pragmatic and should be extended to 30 days so that compliance can be optimized within a commercial setting.	The commenter does not specify why he believes five working days is an insufficient period of time for the applicant to communicate to her employer the specified information and the company to use the online business services entity portal to provide to the Department the required notification. However, once a company has established an account on the portal, the required notification can be sent to the Department in a matter of minutes. There is nothing in the proposed regulations that would require title companies to refuse to allow an applicant to work as a title marketing representative for even a second after the applicant has completed the online application. Accordingly it is uncertain why companies would so instruct their personnel. Indeed, even in the event that the company does not provide the notification to the Department within the five-day period, an applicant may (pursuant to Subparagraphs (a)(3)(A) and (a)(3)(A) of Section 2194.51) continue to operate under provisional authority until fifteen days have elapsed after the delivery to him of the Department's deficiency notice specifying that the employer has not yet provided the necessary notification. Consequently the company actually has at least twenty days to provide the notification before the applicant's provisional authority can be suspended. Additionally, since the primary function of the proposed regulations is to give the Department and others a way of knowing whether or not an application is complete in the first place, extending the period of time during which employers may provide this notification to the Department would undermine the purpose of the regs, by extending the period of uncertainty as to whether any application is or is not complete. If, for instance, the period were extended from five to thirty days as requested, the Department would not be able to send the deficiency notice until the very last day the regulations specify that such a notice must be sent in order for the Department to be able later to suspend the applicant's provisional authority in the event the applicant does not provide the

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Craig C. Page, California Land Title Association	(See above.)	required response to the deficiency notice. For all of the reasons stated above, therefore, no change to the regulation text has been made in response to this comment.
Craig C. Page, California Land Title Association	Title Companies Need to Be Notified if a Title Marketing Representative Working on a Provisional Basis has a Application Deficiency in their Filing: Proposed Sections 2194.51 (a) (3) (A) – (C) of the regulations state that a title marketing representative working on a provisional basis is removed "without notice to the applicant or further action by the Department". Although title company employers may be copied on e-mail correspondence to the title marketing representative, it is CLTA's recommendation that a notice be sent by the CDI to the employer that a title marketing representative has been removed from the database pending the submission of further information and/or may not operate on a provisional basis. Unfortunately, in those cases where a title marketing representative has been notified of deficiencies in their application by the CDI by mail, the title companies are NOT also being notified that outstanding deficiencies must be remedied. The CLTA would suggest that this information be made available through the Department's online business entity services portal. Obviously, it is in the best interests of consumers, CDI and title company employers if better coordination and notification takes place in these situations.	The Department is already legally required to send the employer a copy of any 15-day deficiency notice that is sent to the applicant. Ins. Code § 12418.1, subd. (d). Thus, under the system currently in place, the Department is legally required to notify title companies when one of their applicants has a deficiency in their filing. Contrary to the commenter's statement, the Department does, in fact, send the deficiency notice to the employer in question whenever one of its employees is sent the notice. It is nonetheless possible that a title company might not receive the notice if the company has not provided to the Department the notice of its employee's employment within five working days after the time the applicant completes the online application. However, in such a circumstance, it would be impossible for the Department to notify the employer of the deficiency, since the Department would not, in such a case, know who the employer is. This same difficulty would exist even if the application were submitted in hardcopy rather than online; in that case the equivalent situation would occur if the applicant failed to include in the application the employer's statement of employment, in which case the Department would likewise be just as unable to send the deficiency notice to the employer, for the reason that the employer had not been identified to the Department. Under the system presently in place, all applicants, after they complete the online application, are sent an email instructing them to be sure their employer provides the necessary notification to the Department. At any rate, no change in the language of the regulations could alter the existing statutory requirement that the Department provide to an employers the 15-day deficiency notices that are sent to the applicants who are employees of that employer. The commenter cites language from the proposed

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		regulations but does not indicate that this language, indicating that provisional authority may be suspended without notice, applies only 15 days after the deficiency notice has been delivered to the applicant (and her employer). Once the employer receives the deficiency notice, it is on notice that the applicant's provisional authority may be suspended if the information specified in the deficiency notice is not received by the Department within the 15-day period. The commenter recommends that employers be notified whenever one of their employees is "removed from the database" pending the submission of further information, but the Department does not remove applicants from its database for the reason that the applicant has yet to perfect her submission of supporting information. The applicant, having completed the online application, retains his provisional authority until such time as he fails to respond as directed to a 15-day deficiency notice. The Department has sent deficiency notices by email only. On one occasion, however, we sent an applicant a courtesy notification by U.S. Mail to the effect that her provisional authority had expired, since the email address she had provided was unusable and no company had notified the Department of her employment. Finally, the commenter suggests that application deficiency information be made available to the employer by means of the Department's online business entity services portal. Of course providing this information by this method would be impossible if the employer had not provided to the Department the required notification of employment, since here too, the Department wouldn't know which employer should receive such information. However, the proposed regulations do not document the details of the workings of the Department's online business entity services portal, once a company has gained access to it. Accordingly no change to the regulation text has been made in response to this comment.

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Craig C. Page, California Land Title Association	Retention of Fingerprint Application and ATI Number by CDI is Crucial: Proposed Section 2194.54 (a) (4) of the regulations should be modified to require retention of fingerprinting information and ATI numbers. Currently the provision requires that the applicant indefinitely retain the information that will be provided on the Department's Live Scan request form, including the ATI. It is CLTA's view that retention of the fingerprint application and ATI number by the Department itself is essential. There have been a number of instances when IBT has lost some of the fingerprinting information they collected. This has resulted in title companies and title marketing representatives having to redo these fingerprinting sessions and resubmit them to the Department.	Of course, the regulations do in fact require that the information on the Live Scan request form, including the ATI number, be retained. However, the regulations require applicants and not the Department to retain this information. For the majority of applications the Department does not require this information to be submitted to it; it is only when the Department sends a deficiency notice specifying that the applicant must respond by providing an ATI that the Department needs to keep track of this information. Most of the time the Department can verify that an applicant has been fingerprinted, by means of information provided to it by its contracted Live Scan vendor or other sources. It is only when it appears that an applicant has not begun the fingerprint process that the Department sends the applicant a deficiency notice requiring the applicant to submit her ATI. As is demonstrated in the Initial Statement of Reasons, administering the title marketing representative certificate already causes the Department to expend more resources than can be compensated for by application fees. For this reason, the Department simply lacks the budget to provide the suggested additional service. In addition the commenter states that there was a loss of information by IBT, the Department's contracted Live Scan Vendor. In actuality, IBT did not lose information; instead there was a fingerprint technician error that resulted in the rejection of the fingerprint impressions by the FBI as inadequate for use in performing its background check. When fingerprints are rejected, the individual is to return to the fingerprint vendor to have her fingerprints resubmitted, at no cost. At that time, the individual receives a new ATI number. This is a procedure required by the Department of Justice and the Federal Bureau of Investigation. Accordingly no change to the regulation text has been made in response to this comment.

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Craig C. Page, California Land Title Association	Title Companies Need to Be Notified if a Title Marketing Representative Applicant has a Past Violation Involving Dishonesty or Breach of Trust: Proposed Section 2194.55 (a) (11) (B) 1. a of the regulations states that if anyone is convicted of any violation involving dishonesty or a breach of trust, they cannot work for a title company (or any other line of insurance) without written consent from the CDI. It further states that the consent must be obtained prior to filing of an application. Unfortunately, under the current registration process for title marketing representatives it is impossible for a title company employer to know that this type of past violation may have occurred unless the title marketing representative brings it to their attention independent of the application process itself. In those cases where the CDI may discover this through a background check or through the application process, the title companies are not notified because they do not get a copy of the application a title marketing representative submits. This means that these types of past violations could go unnoticed by the title company employer when they should actually be flagged for our attention and scrutiny. The CLTA would suggest that this information be made available through the Department's online business entity services portal.	Nothing in the legislation the proposed regulations are implementing indicates, suggests or implies that the Department is to make available to employers the contents of an applicant's application. Nor is the Department authorized to communicate to unauthorized third parties the results of background checks on applicants. Indeed, the Department could conceivably incur liability in tort for releasing this information in certain circumstances. At any rate, the proposed regulations do not document the details of the workings of the Department's online business entity services portal, once a company has gained access to it. Finally, it is not the proper role of the Department to assist insurers, underwritten title companies or any other businesses for that matter in the conduct of their personnel screening or other human resources efforts. Accordingly no change to the regulation text has been made in response to this comment.

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Craig C. Page, California Land Title Association	Section 2194.55 Should Be Addressed Through Regulatory Clarification: Proposed Section 2194.55(a) (11) (G) 1 addresses issues surrounding an applicant being involved in an "administrative proceeding" with the CDI in the past and the possible expectation that title marketing representatives be aware these hearings and actions have taken place where the applicant was an owner, partner, officer or director of the company. For example, some title companies have had action taken against them from market conduct studies, etc., in which an officer of the company was involved, at least in the capacity of discussing the investigation and providing information to the CDI or negotiating a settlement. In this section, "involved" means being named a party to an administrative action relating to a professional or occupational license or having a license censured, suspended, revoked, cancelled or terminated or being assessed a fine or placed on probation. This type of past interaction with the CDI does not appear relevant to the title marketing representative's application process. In addition, title marketing representatives are very unlikely to have any knowledge of these past issues and therefore cannot be expected to advise as to information they do not possess when they are applying for a registration. We realize that this Section is a holdover provision left in the application process when this system was designed, but now would like to see it modified so that it no longer applies to title marketing representatives.	The commenter's concern with respect to applicants' involvement in administrative proceedings with the Department is unfounded. The text of the question in the application (as described in the cited subitem of the regulations) makes it clear that only if the applicant was an owner, partner, officer or director of the business that was "involved," as defined, in an administrative action must she answer "yes." Accordingly, the commenter's point that title representatives are unlikely to be aware of such previous actions shows an apparent misunderstanding of the question on the application: Officers of companies are typically aware of such things, including market conduct exams, or at least should be. The information solicited by this question has a direct bearing on whether the applicant "has shown incompetency or untrustworthiness in the conduct of any business," a factor which according to Ins. Code section 1668, subd. (j) (which statute Ins. Code section 12418.4, subd. (a) explicitly makes applicable to TMR applicants) is grounds for denial of the application.

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Craig C. Page, California Land Title Association	The Business Entity Services (BES) Portion of the Department's Site Should be Modified: Within the Department's BES portion of the website for the online application process, a few scenarios do not work correctly when chosen by an applicant.	The proposed regulations do not document the details of the workings of the Department's online business entity services portal, once a company has gained access to it. Accordingly no change to the regulation text has been made in response to this comment.
Craig C. Page, California Land Title Association	(1) For example, if a title company hires an associate from another title company that has applied, but not yet been issued a certificate, the Department's BES site inappropriately shows the effective date of the application as being the date the second title company (and now, new employer) accessed the system, not the date the TMR applicant actually applied. Because the application "follows the title marketing representative, not the employer," the BES portion of the site should be modified to reflect the original application date.	This feature has been incorporated into the Department's system by design. The effective date the commenter mentions is distinct from the date the applicant completes the online application, which date is retained by the Department regardless of the employer information received. In order for a person to be a title marketing representative, that person must be employed by a title insurer, underwritten title company or controlled escrow company. Ins. Code § 12418, subd. (b). It is therefore important that the date the second employer notifies the Department of its employment of representative be on record, so that the representative can be disciplined in the event it is shown that he operated as a title marketing representative at a time when he was not so employed. Accordingly no change to the regulation text has been made in response to this comment.

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Craig C. Page, California Land Title Association	(2) The BES site should also be modified so that a "red flag" is generated showing the new employer why the applicant has not been issued a certificate. If an applicant has answered "yes" to a question that results in additional review by the Department, the new hiring employer has no knowledge of this. Additionally, if the DOI denies issuing an original certification submitted when the title marketing representative was with the former employer, the new employer is now out a lot of time and/or effort that would have been saved had they known the original application was denied. This leaves the title company with some tough human resources issues revolving around an employee's failed application efforts that the employer is unable to track under the current system. The BES site should provide a status alert of the following pending items for applicants and the title companies who are employing them: • DOJ background check not completed • FBI background check not completed • Application submitted contained answers requiring further review.	Nothing in the legislation the proposed regulations are implementing indicates, suggests or implies that the Department is to make available to employers the contents of an applicant's application. Nor is the Department authorized to communicate to unauthorized third parties the results of background checks on applicants. Indeed, the Department could conceivably incur liability in tort for releasing this information in certain circumstances. At any rate, the proposed regulations do not document the details of the workings of the Department's online business entity services portal, once a company has gained access to it. Finally, it is not the proper role of the Department to assist insurers, underwritten title companies or any other businesses for that matter in the conduct of their personnel screening or other human resources efforts. Accordingly no change to the regulation text has been made in response to this comment.
Craig C. Page, California Land Title Association	(3) If a TMR is already certified with a prior employer who has already attested to their training regarding the anti-rebate laws, the current BES site requires a new employer to attest that the TMR has been trained again even though the title marketing representative's registration has not run the full three year term. Thus, existing law does not require certification of retraining that the BES site currently requires.	The proposed regulations do not document the details of the workings of the Department's online business entity services portal, once a company has gained access to it. Accordingly no change has been made to the text of regulations in response to this comment. However, Department staff will make the requested change to the Department's online business entity services portal, as time permits.